IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 900 of 2001

in

SPECIAL CIVIL APPLICATION NO 4832 of 2001

with

CIVILL APPLICATION NO. 9521 OF 2001

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIPINCHANDRA PARSHOTTAMDAS PATEL (VAKIL)

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 900 of 2001

MR ND NANAVATI, SR. COUNSEL WITH GM JOSHI for Appellant No. 1

MR AD OZA GP for Respondents No. 1-4

MR RM CHHAYA for Respondent No. 5

MR HAROOBHAI MEHTA, SR. COUNSEL with MR KS JHAVERI for Respondent No. 6

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision:24/12/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. This Letters Patent Appeal has been preferred by the original petitioner against the order of the learned Single Judge dated 28-08-2001 whereby the Writ Petition against the order of his suspension from the Office of elected President of Anand Municipality has been dismissed.

#. The brief facts of the case are that the petitioner held the Office of President of Anand Municipality. His term of Office is upto 30-06-2002. It is not in dispute that he was detained in jail custody from 13-06-2001 to 06-07-2001 and was released on bail on 07-07-2001. The detention in jail of the petitioner was in connection with a case registered in Anand Police Station as C.R. No. 257 of 2001 and C.R. No. 254 of 2001 for alleged offences under Sections 307, 143, 147, 148 and 149 of the Indian Penal Code (IPC) read with Section 25(C) of the Arms Act and under Section 135 of the Bombay Police Act.

#. The Director of Municipalities by his impugned order dated 21-06-2001 in exercise of his powers under Section 40 of the Gujarat Municipalities Act, 1963 (for short `the Act') suspended the petitioner from the Office of the President on the ground of his detention in prison. The Appeal preferred by the petitioner under subsection (3) of Section 40 of the Act has been dismissed by the State Government through the Deputy Secretary, Urban Development and Urban Housing Department of State of Gujarat.

#. The main contention advanced by the petitioner before the learned Single Judge and in this Court, which is based on the interpretation of the provisions of Section 40 of the Act is that since the detention of the petitioner in prison was not during `trial' within the meaning of Criminal Procedure Code (Cr.P.C.), the provisions of Section 40 of the Act should not have been resorted to for suspending the petitioner from his elected Office of President. The learned Single Judge by

his order dated 28-08-2001, which is the subject matter of this Letters Patent Appeal, has construed the provisions of Section 40 of the Act and held that the expression used therein "detention in jail during trial" includes within its meaning "detention in jail during the process of trial". For better appreciation of the construction placed on the provision of Section 40 of the Act by the learned Single Judge, it would be better to reproduce his reasoning contained in paragraph 10 of the judgment and order:

"10.Having regard to the facts and circumstances stated above, and the practical difficulty that may arise in the functioning of the local body, I am of the view that the expression "detention in jail during trial" mentioned in second part of Section 40(1) of the Gujarat Municipalities Act should not be narrowly construed, and that the expression "detention in jail during trial" should include the detention during pre-trial, trial and post-trial. Having regard to the expectation of the people about the conduct of the holder of public office representatives and the practical difficulty that may arise in the functions of the local bodies, I am of the view that the detention in jail during trial as mentioned in second part of section 40(1) of the Act should be interpreted as "detention in jail during the process of trial" which period shall include from the date of filing of the F.I.R. till the end of trial, and the detention of the President or Vice President at any time during this period in jail shall attract the second part of Section 40(1) of the Gujarat Municipalities Act, and the authority is competent to take a decision whether such President or Vice President who has been detained in custody in connection with the alleged criminal offence should be suspended or not. The authority while considering the suspension of the President or Vice President during detention should take a decision according to the nature and gravity of the offence alleged to have been committed by such President or Vice President. In the instant case when the suspension order was passed by the Director of Municipalities the petitioner was under detention in jail, and when the State Government disposed of the appeal, then also the petitioner was under detention in jail. Therefore, I am of the view that, no illegality has been committed by the Director of

Municipalities or by the State Government in suspending the petitioner from the office of the President of the Municipality. After considering the submission of learned counsel of all the parties, and after going through the provisions of section 40 of the Gujarat Municipalities Act, I am of the view that, there is no merit in the present petition and it is liable to be dismissed."

#. Shri Nirupam Nanavati, learned Sr. Counsel appearing for the petitioner in assailing the reasoning and conclusion of the learned Single Judge submits that the learned Single Judge has embarked on an exercise of interpretation which is clearly prohibited by the settled canons of construction of statutes where the language is plain and unambiguous. He read and relied on the following passage at page 33 of the "Maxwell on The Interpretation of Statutes", 12th Edition:

"It is corollary to the general rule of literal construction that nothing is to be added to or taken out from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. Lord Mersey said: "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity, it is a wrong thing to do." "We are not entitled", said Lord Loreburn L.C., "to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself." A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears in consequence to have been unintentional."

#. Before further dealing with the arguments advanced by the petitioners and on behalf of the respondents, the provisions of Section 40 are required to be reproduced which are somewhat clumsily worded and hence it is reproduced for better appreciation, as suggested by the counsel for the parties in the following manner:-

"40 SUSPENSION OF PRESIDENT OR VICE-PRESIDENT:-
(1) The State Government or any officer
authorized by it,
may suspend from office
a President or vice-President,
- against whom - Any criminal

proceeding in respect of any offence alleged to have been committed by him under the Prevention of Corruption Act, 1947, or the Bombay Prohibition Act, 1949 or while acting or purporting to act in the discharge of his duties under this Act have been instituted OR Who has been detained in a prison during trial under the provision of any law for the time being in force.

(2) Should a president or vice-president be suspended under sub-section (1) a councillor shall be elected to perform all the duties and exercise all the powers of a president or, as the case may be, vice-president during the period for which such suspension continues.

(3) An appeal shall lie to the State Government against an order passed by the authorised officer under sub-section (1). Such appeal shall be made within a period of thirty days from the date of the order."

#. Learned counsel for the petitioner contends that the words and expression "detained in prison during trial" as used in the last part of subsection (1) has to be understood strictly in legal sense in accordance with law under which during trial the President or Vice President, as the case may be, has been detained in prison. Learned counsel therefore made a reference to the Cr.P.C. as the offences alleged against the petitioner under Section 307 I.P.C. read with other Sections of the Code are triable exclusively by the Court of Sessions. On the basis of the provisions of the Cr.P.C., the submission made is that the trial in a Sessions Case begins with committal

of case by the Magistrate to the Sessions Court under Section 209 of I.P.C. The petitioner's detention in prison prior to grant of bail was before the commencement of trial in the Sessions Court and before the commitment of the case to the Court of Sessions. It is, therefore, submitted that the word "trial" used in the expression, in the last part of subsection (1) of Section 40 has a legal significance and has to be understood from the provisions of the Code under which the petitioner was to be subjected to trial. Very strong reliance has been placed on the decisions of the Supreme Court in the cases of Union of India and Others v. Major General Madan Lal Yadav (Retd.) (1996) 4 SCC 127 and Om Parkash Shiv Prakash v. K.I. Kuriakore and Others (1999) 8 SCC 633.

#. Learned Sr. Counsel Shri Haroobhai Mehta, appears for the respondent No.6. At the instance of respondent No. 6, criminal case was instituted and he was heard as a party in the Appeal before the State Government. The submission made on his behalf is that the provisions of Section 40 require a purposive interpretation. The object of the provision is to keep criminal elements away from local bodies and to allow public offices to be held by persons with apparent integrity and moral conduct. Learned counsel for the respondents took the Court to the various provisions of the Cr.P.C. and submitted that the word "trial" used in the Section has to be given a contextual meaning and not a strict legal meaning as understood in the Cr.P.C. It is submitted that the expression "detained in prison during trial" has been used only to distinguish such detention from preventive detention which is not to be included within the meaning. It is, submitted that detention in judicial custody after cognizance is taken by the Magistrate of the offence and before committal to Sessions Court is also included within the contextual meaning of the word "trial". His further argument is that after arrest by the police for alleged offence, remand and congnizance by the Magistrate before actual sessions trial begins are all stages in trial and therefore the word "trial", embraces within its meaning the period of detention through the Magistrate even before committal of the case to the Sessions Court. Reliance is placed on Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and Others (1990) 3 SCC 683 para 79, S.Gopal Reddy v. State of Andhra Pradesh AIR 1996 SC 2184, Halar Utkarsh Samiti Through Prakash H. Doshi v. State of Gujarat through Chief Secretary XLII(2) 2001 (2) GLR 964, Tarlochan Dev Sharma v. State of Punjab and others (2001) 6 SCC 260 and Ahmedabad Municipal Corporation vs. Nilaybhai R. Thakore 41 (1)

GLR 634.

#. The main question that falls for consideration and decision before us is whether on the facts of this case, the provisions of Section 40 are attracted to the detention in prison of the petitioner. The main controversy involved between the parties is to the meaning of the word "trial" in last part of subsection (1) of Section 40. If the provision of Section 40 in its complete setting is examined critically it is to be found that President or Vice President can be suspended only on the institution of criminal proceedings in respect of offence alleged to have been committed under Prevention of Corruption Act or Bombay Prohibition Act. The concerned elected holder of Office can also be suspended for any criminal proceeding instituted against him in respect of any offence alleged to have been committed by him "while acting or purporting to act in the discharge of his duties under this Act". Admittedly, the first and second part of subsection (1) is disjunctive as indicated by putting word or in the first and second parts of the Section quoted above is not attracted to the facts of this case, because the petitioner is not facing any criminal proceedings under the two enactments mentioned in the first part and the offence alleged against him is not one which has been committed while acting or purporting to act in discharge of his duties under the Act.

##. Admittedly, his case is to be considered for applicability of the last part of the Section following the disjunctive word OR (in capital and underlined twice) in the text of the Section reproduced again.

##. Reading the Section as a whole, it appears that the power of suspension has been conferred on the State Government or Officer authorised by it and the exercise of it is subject to scrutiny by the appellate authority in accordance with subsection (3) of Section 40. The object of Section 40 is also apparent that where criminal proceedings of the nature described in Section 40 are pending or a person is detained in prison, he is sometimes practically and morally disabled from discharging his duties of the elected Office. He is held as disqualified from continuing to hold the office on legal and moral grounds. The object behind the Section is thus amply clear that persons in the elective offices facing criminal proceedings of the nature mentioned in the Section are to be kept away from the elected office until they are cleared of the charge. If the holder of the Office is convicted a vacancy arises in the elected

office which is required to be filled by fresh elections in accordance with Section 42(2) of the Act. If the suspension of the President is subsequently revoked by the Competent Authority empowered under subsection (1) or in appeal under subsection (3), the elected holder of office may resume his office and in the interregnum period, during which he remained under suspension, the Vice President, pending fresh election to the office of President, shall exercise powers of the President in accordance with Section 46 of the Act. On well established principles of interpretation of statutes we have to assign such meaning to the word "trial" used in the expression "detained in prison during trial" as would best effectuate the object of the Act without doing violence to the plain meaning of those words in the Section.

##. Somewhat acceptable argument advanced on behalf of the petitioner is that the petitioner is to be tried in the Sessions Court for offences under Section 307 read with other Sections of Indian Penal Code. The sessions trial commences only after committal of the case by the Magistrate and the first step in the trial is the production of the accused before the Sessions Court and framing of charge against him. It is argued that any detention therefore even in judicial custody before commencement of sessions trial would not attract the last part of Section 40 of the Act.

##. After critically examining the last part of Section 40 which reads "or who has been detained in prison during trial under the provisions of any law for the time being in force" what we find is that the provision is intended to cover not only trials to be held under the Cr.P.C., but all kinds of trials which might be held under any other special Acts or provisions of law. In the said last paragraph of Section 40 the use of expression "under the provisions of any law for the time being in force" makes the legislative intent manifest that the provision is intended to cover detention in prison during trial under provision of any law including the Cr.P.C.

##. The word "trial", therefore, cannot be given a fixed meaning as is to be understood from the Cr.P.C. The word "trial" has, therefore, to be given a meaning as is to be understood from the law applicable to the trial in question during which the holder of the elected office has been detained. In the instant case, we agree with the submission made on behalf of the petitioner that since the petitioner was detained for trial under Section 307 and other Sections of the IPC, the provisions of

Cr.P.C. should determine the nature of his detention.

##. The real difficulty, however, is that the word "trial" is not expressly defined in the provisions of the Cr.P.C. Only the word "inquiry" has been defined which is reproduced hereunder to distinguish it from a trial:-

"2 Definitions.-In this Code, unless the context otherwise requires,-
(a) to (f) xx xx xx
(g). "Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court."

Similarly, "investigation" has been defined in Section 2(h):

"2(h). "Investigation" includes all proceedings under this Code for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

##. The examination in detail of the provisions of the Code makes it clear that after an offence is reported to have been committed the Police Officer may arrest the offender and investigation begins. The person arrested has to be produced within 24 hours excluding the period of travel, before a Magistrate. That is a constitutional guarantee under Article 22 of the Constitution of India and a legal obligation of the police under the Constitution and the provisions of the Cr.P.C. The Magistrate before whom the arrested accused is produced, may remand him to the police custody for the purpose of completing the investigation, but not beyond the period of 15 days. Beyond the period of 15 days he can be allowed to be in police custody under special order of the Magistrate so that the total period in police custody does not exceed 90 days where the investigation relates to an offence punishable with death or imprisonment for life or for term not less than ten years and 60 days in other cases. This is the requirement of subsection (2) of Section 167 of the Code. When an accused is brought before the Magistrate in a case triable exclusively by a Court of Sessions, the Magistrate has to commit the case to the Court of Sessions in accordance with Section 209 of the Cr.P.C. The procedure of trial before the Court of Sessions is contained in Chapter XVIII of the Cr.P.C. The trial begins with opening of case for prosecution by the prosecutor and after the accused appears or is brought before the Court in accordance with Section 226

of the Cr.P.C. Admittedly, at the time when the petitioner was suspended he was under detention in prison under the orders of Magistrate and trail in accordance with Chapter XVIII with first step under Section 226 before that Court had not commenced.

##. The question before us is whether the period of detention under the orders of the Magistrate and prior to grant of bail by the Sessions Court can be held to be a detention `during trial' within the object and meaning of Section 40 of the Act.

##. In the Criminal Procedure Code, after commission of an offence is reported, the police has the permission to arrest the alleged offender. After `arrest' which is called `detention in police custody', the Magistrate is required to be approached for detention beyond 60 days, in accordance with Section 167 of the Cr.P.C. and remand can be given for 60 or 90 days, as the case may be. Any detention thereafter to the judicial custody can be ordered by the Magistrate till the accused is granted bail by the competent court and he is allowed to be released.

##. We have no manner of doubt that the detention by police after arrest and detention on remand in police custody are clearly not intended to be covered by the last part of Section 40 of the Act because if that would have been the intention, as is provided in the first and second part of subsection (1) of Section 40, the Legislature could have provided for suspension of the holder of elected office merely on institution of a criminal case against him under any provision of law. Suspension merely on institution of a case for commission of alleged offence is restricted to the two enactments specifically mentioned in the first part and for any criminal proceedings for offence alleged to have been committed while acting or purporting to act in the discharge of his duties under the Act in the second part of the Section. Preventive detention and detention in police custody after arrest or on remand to the police are clearly excluded from the ambit of the last part of subsection (1) of Section 40. So far as the detention in judicial custody is concerned, in our opinion, the word "trial" which is not expressly defined in the Cr.P.C. should not be given a restricted meaning to include only proceedings after the accused is actually arraigned before the competent court for framing and facing the charge.

##. Detention in judicial custody is a step or prelude

to criminal trial and there is no reason why this `detention' cannot be held to be covered within the expression `detained in prison during trial'. We do not find ourselves in complete agreement with the reasoning of the learned Single Judge that the expression `detained in prison during trial' would include even pre-trial detention. But we find sufficient force in the reasoning of the learned Single Judge that the expression `detention in prison during trial' should include any detention during the process of trial meaning thereby that if before committing the case to the Sessions Court for trial an accused is in judicial custody, the said period of detention would also be in the process of trial and therefore would be held to be "during trial". This contextual meaning has to be given to the expression detention in jail during trial to fulfil the object of the provision to keep under suspension holders of elected offices in the local bodies who are incapacitated legally and morally from continuing in office because of their detention on accusation of an offence for which trial is under way.

##. The two decisions of the Supreme Court on which heavy reliance has been placed on behalf of the petitioner are distinguishable. In the case of Major General Madan Lal Yadav (supra) [(1996) 4 SCC 127] the question arose on the point of limitation prescribed in Section 123 of the Army Act for holding Court Marshal against an Officer within six months after his retirement. The question before the Supreme Court was on which date did the trial of the Army Officer commenced. It is in the context of the provision of Section 123 read with 122(3) of the Army Act and Rules that the Supreme Court held "that the trial commences with the performance of the first act or step necessary or essential to proceed with the trial and which would deem to have commenced on the date the Court Marshal assembled to consider the charge against the Army Officer." The question of limitation prescribed under Section 123 of the Army Act was thus construed in the light of the other provisions of the Army Act and it was held that a trial commences when the Court Marshal assembles to try the Officer. The decision is not directly of assistance while construing provisions dealing with continuance of the person in an elected office in local bodies where detention in prison under various laws are required to be dealt with to adjudge persons incapable of discharging their duties physically and morally from continuing in office.

##. The other decision of the Supreme Court in the case

of Om Parkash (supra) (1999) 8 SCC 633 was concerning the provisions contained in Section 20(A) of the Prevention of Food Adulteration Act, 1954. Section 20(A) of the said Act allows the competent designated court to proceed against manufacturer, distributor or dealer of any article of food in the course of trial before him and in that eventuality the provisions of sanction for prosecution contained in Section 319 of Cr.P.C. were not to apply. The Section contained a non-obstante clause. It is in the context of Section 20(A) of the Prevention of Food Adulteration Act that the question arose as to when a trial would be deemed to have commenced and pending for the purpose of invoking power under Section 20(A) of the said Act against the manufacturer, distributor or dealer of any article of food. After examining the provisions of the said Act and the Criminal Procedure Code the Supreme Court came to the conclusion that since the offence is triable by Magistrate, the trial begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 of the Code.

##. In the decision of Om Prakash (supra) the Supreme Court relied on its earlier decision in the case of The State of Bihar vs. Ram Naresh Pandey and another AIR 1957 SC 389 and quoted the portion of its verdict for coming to the conclusion that the term "trial" cannot be given a fixed meaning to be applied in all cases uniformly. It observed:

> "the connotation of that word changes with the difference in which the term is employed in a particular provision of any statute"

In the decision of Om Parkash (supra) the Supreme Court then quoted the following observations from the judgment of the Supreme Court in the case of Ram Naresh (supra) and which in our opinion fully supports our reasonings and conclusion on the interpretation of the word "trial" and expression "detention during trial" as used in Section 40(1) of the Act.

> "The word "tried" and "trial" appears to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words "tried" and "trial" have been used in a sense of reference to a stage after the enquiry. That meaning attaches to the words in those Sections having regard to the context in which they are used. There is no reason why where these words are used in another

context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration."

##. It is to be noted that in the case of Ram Naresh (supra) the Supreme Court was considering the use of the word "tried" as used in the Code itself in Section 494 which permitted the Public Prosecutor to withdraw the case from the prosecution of any person either generally or in respect of any one or more offences. The case was sought to be withdrawn at the committal stage and not after the commencement of trial in the Court of Sessions. The question before the Supreme Court was whether such a withdrawal by the prosecution at a committal stage is impermissible under Section 494 of Cr.P.C. of 1898. After examining and construing the relevant provisions of the Code itself, the Supreme Court came to the conclusion that as the word "trial" and "tried" have no definite or fixed meaning, it has to be construed in the context in which the word appears. After examining the legislative history of the relevant provision of the Code under consideration (as they stood then) the Supreme Court came to the following conclusion:-

"These various legislative changes from time to time with reference to S. 494, Criminal P.C., and the definition of the word `inquiry' confirm the view that S. 494, Criminal P.C., is wide enough to cover every kind of inquiry and trial and that the word `trial' in the section has not been used in any limited sense."

##. Relying on the above quoted portion of the ratio of the judgment of the Supreme Court in the case of Ram Naresh (supra) as relied in Om Parkash (supra), we are of the view that the expression "has been detained in prison during trial" has not to be given a limited meaning as contended on behalf of the petitioner. Detention in judicial custody being a step in aid of trial would be covered by that expression. In our considered view, the expression "has been detained in a prison during trial" would surely not include preventive detentions under any provision of law or detention in police custody, but would certainly include detention in judicial custody as a step or process towards trial. Such reasonable meaning has to be assigned to the expression for the purpose of fulfilling the aim and object of the provision. In so construing, we do not think we are either adding to or

substracting anything from the provisions of the Section.

##. For the reasons different than those which have been expressed by the learned Single Judge, we agree with his conclusion and hold that the competent authority and the appellate authority committed no error in holding that the petitioner was validly suspended under the provisions of Section 40(1) of the Code.

##. As a result of the detailed discussion aforesaid, the Letters Patent Appeal fails and is hereby dismissed, but in the circumstances with no order as to costs.

Civil Application shall stand dismissed accordingly.

(D.M. DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J.)

After pronouncement of the judgment, learned counsel for the appellant requested that the interim order may be continued for four weeks to enable the appellant to approach the higher forum. Since the vacancy caused on the post of President has to be filled by fresh election, we extend the interim order that is operative during pendency of the Appeal for a period of four weeks.

(D.M.DHARMADHIKARI, C.J.)

(RAVI R. TRIPATHI, J.)